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6 UNITED STATES DISTRICT COURT  
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8 NORTHERN DISTRICT OF CALIFORNIA  
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10 SAN FRANCISCO DIVISION

11 **IN RE GOOGLE PLAY STORE**  
12 **ANTITRUST LITIGATION**

13 THIS DOCUMENT RELATES TO:

14 *Match Group, LLC et al. v. Google LLC et al.*,  
15 Case No. 3:22-cv-02746-JD

16 *Epic Games Inc. v. Google LLC et al.*, Case  
17 No. 3:20-cv-05671-JD

18 *In re Google Play Consumer Antitrust*  
19 *Litigation*, Case No. 3:20-cv-05761-JD

20 *In re Google Play Developer Antitrust*  
21 *Litigation*, Case No. 3:20-cv-05792-JD

22 *State of Utah et al. v. Google LLC et al.*, Case  
23 No. 3:21-cv-05227-JD  
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Case No. 3:21-md-02981-JD

**STIPULATED ~~[PROPOSED]~~ SECOND**  
**AMENDED SUPPLEMENTAL**  
**PROTECTIVE ORDER GOVERNING**  
**PRODUCTION OF PROTECTED**  
**NON-PARTY MATERIALS**

Judge: Hon. James Donato

1 WHEREAS, on May 20, 2021, the Court entered a Stipulated Protective Order Governing  
 2 Production of Protected Non-Party Materials (the “Non-Party Protective Order”) in the above-  
 3 captioned cases. *See* Case No. 3:21-md-02981-JD, Dkt. No. 44;

4 WHEREAS on July 20, 2021, the Court entered an Order Determining Cases to be  
 5 Related with respect to the case entitled *State of Utah, et al. v. Google LLC et al.*, Case No. 3:21-  
 6 cv-5227-JSC, which consolidated that case into MDL Case No. 2981 (the “Litigation”). The  
 7 Parties acknowledge that certain protective orders require amendment to govern the production  
 8 by and to the Plaintiff States;

9 WHEREAS on December 10, 2020, the Court entered a Stipulated Protective Order in the  
 10 following cases: Case No. 3:20-cv-05671-JD, Dkt. No. 110, approving Dkt. No. 106-1; Case No.  
 11 3:20-cv-05761-JD, Dkt. No. 117, approving Dkt. No. 109-1; Case No. 3:20-cv-05792; JD, Dkt.  
 12 No. 78, approving Dkt. No. 76-1, and Parties have concurrently submitted an amendment to that  
 13 Stipulated Protective Order to govern the production by and to the Plaintiff States (“Amended  
 14 Protective Order”);

15 WHEREAS on October 22, 2021, the Court entered a Stipulated Supplemental Protective  
 16 Order Governing Production of Protected Non-Party Materials (the “First Amended Supplemental  
 17 Protective Order”) in the following cases: Case No. 3:21-md-02981-JD, Dkt. No. 124, approving  
 18 Dkt. No. 117; Case No. 3:20-cv-05671-JD, Dkt. No. 190, approving Dkt. No. 185; Case No.  
 19 3:20-cv-05761-JD, Dkt. No. 224, approving Dkt. No. 219; Case No. 3:20-cv-05792-JD, Dkt. No.  
 20 163, approving Dkt. No. 158; Case No. 3:21-cv-05227-JD, Dkt. No. 186, approving Dkt. No.  
 21 177;

22 WHEREAS on December 20, 2021, the Court entered a Stipulated Second Amended  
 23 Protective Order in Case No. 3:21-md-02981-JD, Dkt. No. 170, approving Dkt. No. 154; Case  
 24 No. 3:20-cv-05671-JD, Dkt. No. 203, approving Dkt. No. 199; Case No. 3:20-cv-05761-JD, Dkt.  
 25 No. 239, approving Dkt. No. 232; Case No. 3:20-cv-05792- JD, Dkt. No. 177, approving Dkt.  
 26 No. 168, Case No. 3:21-cv-05227-JD, Dkt. No. 204, approving Dkt. No. 198 (the “Second  
 27 Amended Protective Order”);  
 28

1 WHEREAS, the Parties in the above-captioned cases have filed concurrently herewith the  
2 Stipulated [Proposed] Third Amended Protective Order (the “Third Amended Protective Order”);

3 WHEREAS, Section 11(a) of the Third Amended Protective Order states that its  
4 provisions should not “be construed as prohibiting a Non-Party from seeking additional  
5 protections”;

6 WHEREAS, materials that Parties intend to produce in the Litigations may contain  
7 information that is subject to contractual obligations to a Non-Party, including but not limited to  
8 non-disclosure agreements between a Party and Non-Party, or may otherwise contain Non-Party  
9 Protected Material (as defined herein);

10 WHEREAS, Parties have served subpoenas pursuant to Rule 45 of the Federal Rules of  
11 Civil Procedure on Non-Parties;

12 WHEREAS, certain Non-Parties have expressed concerns regarding the production of  
13 competitively sensitive information to Parties in the Litigations absent certain additional  
14 protections beyond those set forth in the Third Amended Protective Order;

15 WHEREAS, on May 9, 2022, Match Group, LLC; Humor Rainbow, Inc.; PlentyofFish  
16 Media ULC; and People Media, Inc. filed a complaint in Case No. 3:22-cv-02746-JD, which has  
17 been related to the above matters, and too consent to the terms of the First Amended  
18 Supplemental Protective Order;

19 WHEREFORE, IT IS HEREBY ORDERED that documents or information disclosed or  
20 produced by Non-Parties or by Parties to the extent such documents or information are designated  
21 as containing Non-Party Protected Material in connection with the Litigations shall be subject to  
22 the following provisions (the “Second Amended Supplemental Protective Order”):

23 1. GENERAL PROVISIONS

24 1.1 The definitions, terms and provisions contained in the Third Amended  
25 Protective Order shall be incorporated herein by reference as though fully set forth herein;  
26 provided, however, that in the event of a conflict between any definition, term, or provision of  
27 this Second Amended Supplemental Protective Order and any definition, term, or provision of the  
28

1 Third Amended Protective Order, this Second Amended Supplemental Protective Order will  
2 control with respect to such conflict.

3 1.2 The definitions, terms and provisions contained in this Second Amended  
4 Supplemental Protective Order shall apply only to those Discovery Materials designated as Non-  
5 Party Protected Material in accordance with this Second Amended Supplemental Protective  
6 Order, and nothing herein shall provide any rights or protections to the Parties to the Litigations  
7 beyond those set forth in the Third Amended Protective Order.

## 8 2. DEFINITIONS

9 2.1 Designating Party: a Party or Non-Party that designates information or  
10 items that it produces in disclosures or in responses to discovery in the Litigations as “NON-  
11 PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY.”

12 2.2 Non-Party Protected Material: sensitive Non-Party confidential  
13 information or documents, disclosure of which to another Party or Non-Party could create a  
14 substantial risk of serious harm to the Non-Party.

## 15 3. SCOPE

16 3.1 This Second Amended Supplemental Protective Order covers not only  
17 documents designated “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL  
18 EYES ONLY”, but also any information copied, excerpted, or summarized from documents with  
19 such designation and any testimony, conversations, or presentations by Counsel that might reveal  
20 information from documents with such designation. However, the protections conferred by this  
21 Second Amended Supplemental Protective Order do not cover the following: (a) any documents  
22 or information that is in the public domain at the time of disclosure to a Receiving Party or  
23 becomes part of the public domain after its disclosure to a Receiving Party for reasons not  
24 involving a violation of this Second Amended Supplemental Protective Order or the Third  
25 Amended Protective Order, including becoming part of the public record through trial or  
26 otherwise; and (b) any documents or information known to the Receiving Party prior to the  
27 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
28

document or information lawfully and under no obligation of confidentiality to the Designating Party.

3.2 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

#### 4. DESIGNATION AND USE OF NON-PARTY PROTECTED MATERIAL

4.1 In order for materials produced in discovery to qualify for protection as “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”, the Designating Party must affix the legend “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” to each page of any document for which the Designating Party seeks protection under this Second Amended Supplemental Protective Order;

4.2 Unless otherwise ordered by the Court or permitted by all implicated Non-Parties, a Receiving Party may disclose documents and information designated as “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” to the following only:

(a) The Receiving Party’s Outside Counsel of Record in this action, as well as employees of Outside Counsel of Record to whom it is reasonably necessary to disclose the documents or information for this litigation and who have signed the “Acknowledgment and Agreement to be Bound” (Exhibit A to the Third Amended Protective Order);

(b) State AGO Attorneys who have appeared on behalf of Plaintiff States in this litigation, who are actively prosecuting the Litigation, or to whom it is reasonably necessary to disclose the information for purposes of this litigation; State AGO Attorneys who have appeared will maintain a list of Attorneys as well as supervisors of support staff subject to this section;

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for the Litigations and (2) who have signed the “Acknowledgment and Agreement to be Bound” (Exhibit A to the Third Amended Protective Order);

(d) The Court and its personnel;

(e) Stenographic reporters, videographers, and their respective staff,

1 professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably  
 2 necessary for these Litigations and who have signed the “Acknowledgment and Agreement to be  
 3 Bound” (Exhibit A to the Third Amended Protective Order);

4 (f) The author or recipient of a document containing the information or  
 5 custodian or other person who otherwise possessed or knew the information.

6 4.3 Filing and Filing under Seal. A Party may not file in the public record in  
 7 this action any Non-Party Protected Material. Non-Party Protected Material may be filed only  
 8 under seal pursuant to a Court order authorizing the sealing of the specific Non-Party Protected  
 9 Material at issue. A Party that seeks to file under seal any Non-Party Protected Material must  
 10 comply with Civil Local Rule 79-5. In addition to the requirements of Civil Local Rule 79-5(e),  
 11 the Party seeking to file under seal any Non-Party Protected Material should identify the Non-  
 12 Party whose Non-Party Protected Material has been designated as “NON-PARTY HIGHLY  
 13 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” and serve the supporting declaration  
 14 on the Non-Party so that Non-Party has the opportunity to file a declaration establishing that all of  
 15 the designated material is sealable pursuant to Civil Local Rule 79-5(e). If a Receiving Party’s or  
 16 Non-Party’s request to file Non-Party Protected Material under seal pursuant to Civil Local  
 17 Rule 79-5(e) is denied by the Court, then the Receiving Party may file the Protected Material in  
 18 the public record pursuant to Civil Local Rule 79-5(e)(2), unless otherwise instructed by the  
 19 Court.

20 4.4 Use of Non-Party Protected Material at Depositions. Except as may  
 21 otherwise be ordered by the Court, any person may be examined as a witness at deposition and  
 22 may testify concerning Non-Party Protected Material to the extent such person was the author,  
 23 recipient, or custodian of the material, or otherwise possessed or had prior knowledge of such  
 24 material. For clarity,

25 (a) A present director, officer, agent, employee and/or designated Rule  
 26 30(b)(6) witness of a Non-Party may be examined and may testify concerning Non-Party  
 27 Protected Material, but to the extent a document is designated as NON-PARTY HIGHLY  
 28

1 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY and contains another Non-Party’s  
 2 Protected Material, all such materials, of which such person did not have prior knowledge, should  
 3 be redacted prior to introducing any such document for examination;

4 (b) A former director, officer, agent, and/or employee of Non-Party  
 5 may be interviewed or examined and may testify concerning Non-Party Protected Material to the  
 6 extent such person was the author, recipient, or custodian of the material, or otherwise possessed  
 7 or had prior knowledge of such material, but to the extent a document is designated as NON-  
 8 PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY and contains  
 9 another Non-Party’s Protected Material, all such materials, of which such person did not have  
 10 prior knowledge, should be redacted prior to introducing any such document for examination;

11 (c) Any other witness may be examined at deposition or otherwise  
 12 testify concerning any document containing Non-Party Protected Material which appears on its  
 13 face or from other documents or testimony to have been received from, communicated to, or  
 14 otherwise made known to that witness as a result of any contact or relationship with the Non-  
 15 Party, but to the extent a document is designated as NON-PARTY HIGHLY CONFIDENTIAL –  
 16 OUTSIDE COUNSEL EYES ONLY and contains another Non-Party’s Protected Material, all  
 17 such materials, of which such person did not have prior knowledge, should be redacted prior to  
 18 introducing any such document for examination; and

19 (d) At deposition, any person other than (i) the witness, (ii) the  
 20 witness’s outside attorney(s), and (iii) any Person(s) qualified to receive documents designated as  
 21 NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY under this  
 22 Second Amended Supplemental Protective Order shall be excluded from the portion of the  
 23 examination concerning such information, unless the Non-Party or the witness appearing on  
 24 behalf of the Non-Party whose Non-Party’s Protected Material is at issue consents to that  
 25 person’s attendance. If the witness is represented by an outside attorney who is not qualified  
 26 under this Second Amended Supplemental Protective Order to receive such information, then  
 27 prior to the examination, the outside attorney shall be requested to sign and provide a signed copy  
 28



1 of the “Acknowledgment and Agreement to be Bound” attached as Exhibit A to the Third  
 2 Amended Protective Order, and to confirm that he or she will comply with the terms of this  
 3 Second Amended Supplemental Protective Order and maintain the confidentiality of information  
 4 contained within documents designated as NON-PARTY HIGHLY CONFIDENTIAL –  
 5 OUTSIDE COUNSEL EYES ONLY. In the event that such outside attorney declines to sign the  
 6 “Acknowledgment and Agreement to be Bound” prior to the examination, the Non-Party may  
 7 seek a protective order from the Court, in a motion to which the Parties will not object,  
 8 prohibiting such outside attorney from disclosing Non-Party Protected Material.

9           4.5     Use of Designated Material at Hearings. A Party must not disclose NON-  
 10 PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY information,  
 11 directly or indirectly, in an open hearing without prior consent from the Non-Party or without  
 12 authorization from the court. If the disclosing party anticipates disclosing any NON-PARTY  
 13 HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY information in any open  
 14 hearing, the disclosing party must notify the Non-Party of its intent to disclose such material at  
 15 least four (4) business days in advance of such disclosure, or, if such notice is not possible, as  
 16 soon as is reasonably practicable, and describe the materials to be disclosed with reasonable  
 17 particularity, so that the Non-Party has the opportunity to file an objection to such disclosure and  
 18 establish that the materials to be disclosed are sealable pursuant to Civil Local Rule 79-5(e) and  
 19 the Court’s standing orders. If such notice is not given or the Non-Party files such an objection,  
 20 the Disclosing Party must request that the courtroom be sealed, and that only those authorized to  
 21 review NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY  
 22 information remain present during the presentation of such material, unless the Court orders  
 23 otherwise.

24           4.6     Use of Designated Material at Trial. Any Party that discloses any NON-  
 25 PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY materials on any  
 26 trial exhibit list exchanged with an opposing Party, or that is disclosed to the Court, must disclose  
 27 such materials to the implicated Non-Party no later than two (2) business days after such  
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exchange or disclosure, and describe the materials with reasonable particularity, so that the Non-Party has the opportunity to file an objection to such disclosure and establish that the materials to be disclosed are sealable pursuant to Civil Local Rule 79-5(e) and the Court's standing orders. If such notice is not given or the Non-Party files such an objection, the Disclosing Party must request that the courtroom be sealed, and that only those authorized to review NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY information remain present during the presentation of such material, unless the Court orders otherwise.

Dated: May 20, 2022

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20 *Google Play Developer Antitrust Litig.; Epic*  
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22 *al. v. Google LLC et al.*

23 **ORDER**

24 Pursuant to stipulation, it is so ordered.

26 DATED: May 25, 2022

27   
HON. JAMES DONATO  
United States District Judge